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SPECIFIC GROUPS AND INDIVIDUALS: MIGRANT WORKERS

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ENG

1. In spite of numerous legal safeguards, the 200,000-plus Foreign Domestic Workers (FDWs) in Hong Kong Special Administrative Region (SAR) of the People's Republic of China suffer many violations of their human rights.

2. As the economy of Hong Kong boomed in the mid-1970s, near full employment was achieved, resulting in a perceived labour shortage. In response, the government mobilized local women eager to enter the labour market to increase household income. However no facilities were provided to relieve families from housekeeping and child-rearing tasks. In addition, working women had to cope with the patriarchal resistance of men to share responsibility for domestic chores. Other women were increasingly employed to perform these tasks. Accordingly, the Government of Hong Kong liberalized the importation of FDWs in the early 1980s. By 1990 there were at least 70,335 FDWs (90% Filipinos, 6% Thais, 4% all others). In May 2000, FDWs in Hong Kong SAR totaled 202,900 (73% Filipinos, 23% Indonesians, 3% Thai, 1% all others). As of December 2001, an estimated 230,000 FDWs are working in Hong Kong. Most are women.

3. All legal FDWs in Hong Kong SAR are protected by a standard employment contract spelling out minimum working conditions and employers' responsibilities. FDWs also have a legal minimum wage set by the government, which is unique in the territory. This is a form of protection in recognition of the specific vulnerability of FDWs. They are also covered by the Employment Ordinance, and thus enjoy the same legal rights as local workers, including the rights to unionize, demonstrate and undertake religious/cultural activities. The Ordinance defines not only the benefits/entitlements of workers; it likewise provides maternity leave and trade union protection. The territory strictly requires, and is able to reasonably enforce, standard employment contracts for migrant workers. Its developed legal system, service mechanisms and effective bureaucracy provide well-defined channels for redress of FDW grievances. There are also many non-government organisations and migrant-support groups providing services.

4. Despite the above, FDWs in Hong Kong SAR experience numerous contract violations and criminal abuses. The Asian Migrant Centre (AMC) estimates that the more than 20 migrant counseling centres in Hong Kong SAR handle at least 1,500 cases a year. The Labour Relations Division of the Labour Department handled 1,447 claims from FDWs in the first eight months of 2000. Violations generally relate to unfair termination, problems of underpayment, inhuman treatment, exorbitant agency fees, and physical and sexual abuse, including rape.

5. In February 2001 the Coalition for Migrants' Rights (CMR) and AMC published a report indicating that:

   - At least a quarter of all FDWs in Hong Kong SAR suffer violations of contract, and the worst violations are against Indonesian and women workers:

      i. At least 15% of all FDWs are underpaid. As many as 48% of Indonesians are underpaid. Indonesians also receive the lowest average pay (HK $3,073). More women (15%) are underpaid than men (8%) and women are also paid a lower average wage (HK$3,619) than men (HK$4,758).

      ii. At least 22% of all FDWs are not given the mandated one rest day per week. More than 2% are held in virtual bondage with almost no day off at all. More than 61% of Indonesians don't get the mandated rest days and more women (22%) are affected than men (9%).

iii. At least 26% of all FDWs are not given the 12 statutory holidays per year. More than 18% have only one or no holiday at all in a year. Almost 64% of Indonesians do not get any holiday and more women (26%) are affected than men (8%).

- 26% of FDWs suffer from verbal and physical abuse. Indonesians are the most widely abused (33%), although the problem is also high among Thais (26%) and Filipinos (22%). More women (26%) are verbally and physically abused than men (20%).

- As many as 4.5% of FDWs are subjected to sexual abuse, including rape, all of them being women. There are very particular patterns depending on FDW's nationality.

6. A related survey conducted by AMC, Kotkiho (an alliance of Indonesian migrants' groups) and Amal Indonesia Direct found that Indonesian FDWs are specifically targeted by employment/recruitment agencies' practice of overcharging fees. The survey found that 89% of Indonesian FDWs were charged above the Indonesian government-set maximum charge of HK$367, and the mean average charged by agencies was HK$5,655.

7. FDWs responding to the above research stated that the following government policies and practices are particularly discriminatory:

   - The "2-week rule", which stipulates that a FDW who is terminated has only 2 weeks, or until the expiration of visa (whichever is earlier), to legally stay in Hong Kong SAR. Similar restrictions are not imposed on foreigners working in professional fields.

   - "New conditions of stay" adopted by the government in 1987, which include restrictions on shifting employers without approval from the Immigration Department, and an outright prohibition on FDWs shifting to other (non-domestic work) job categories. FDWs are also unable to obtain rights of residency even if they have continuously worked in Hong Kong SAR for over seven years. Again, these restrictions apply only to FDWs and not other foreign workers.

   - Not being allowed to work while a case is pending before the labour department, courts or other authority. Cases normally stretch for months or sometimes years.

   - Not being allowed to do part-time jobs, although other people can.

   - Not being allowed to stay with family in Hong Kong SAR.

   - No voting rights or other representation in the policy-making processes.

8. Proposals to cut back on protection for FDWs have placed them further at risk. A 1999 suggestion to remove maternity rights from FDWs would lead to employment being terminated automatically upon becoming pregnant. Other discriminatory proposals have included a service tax on FDWs for their use of public facilities, a levy on employers of FDWs, and a quota system to restrict their number. In November 2001 the Education and Manpower Bureau proposed a second reduction of the minimum wage for FDWs (following a 5% cut in 1999) and to stop the option of live-out arrangements. The wage cut proposal particularly has caused great anxiety among domestic workers, who see this as symptomatic of government measures targeting the weakest and lowest status workers in times of economic crisis.

9. FDWs are also typically discriminated against in shops and other commercial

establishments and on public transport, in government offices—especially the Immigration Department and police—as well as by the public in general. Hence, violations of migrant workers' rights are not rare or isolated incidents but are systemic and structural. The situation of migrant domestic workers is a classic example of the inter-sectionality of class, racial and gender discrimination.

10. In keeping with the CMR/AMC report, the Asian Legal Resource Centre urges the Government of Hong Kong SAR to:

- Promptly address all violations of FDWs rights, including via

  i. The establishment of sympathetic, confidential and effective reporting channels, whereby migrants will be encouraged to report abuses without fear of retaliation;

  ii. The assurance of proper and quick investigation and prosecution processes to avoid additional problems arising from drawn out or delayed procedures;

  iii. Adequate professional assistance for the victims of abuse, including multilingual counselling and legal aid, 24-hours hotline services, safe and adequate shelters and social assistance; and,

  iv. Regional and bilateral cooperation to eliminate the exploitative practices of agencies, as well as (corrupt) collaborative practices of embassy officials.

- Undertake awareness-raising activities to inform and educate FDWs, government agencies, the general public and especially employers about the rights of migrant workers and their value to Hong Kong SAR society.

- Acknowledge the problem of discrimination against migrant workers and adopt measures to address it, including a review of existing discriminatory government policies and proposals, and the enactment of anti- discrimination legislation in keeping with international principles.

- Provide greater support to non-government organisations and social groups assisting migrant workers and encourage local service organisations to extend their services to migrants.

- Encourage the formation of trade unions and other consultative groups to strengthen the bargaining power of migrant workers.

- Employ the 1990 UN Convention for the Protection of Migrant Workers and Members of Their Families as the international standard to guide the review and formulation of all FDW policies, with the full participation of FDW representatives and their organisations.

- Review and upgrade the present already minimal wage and contractual conditions regularly.